

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JAMES MAURICE SMITH,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3081-CV-S-RED-H
MARTY C. ANDERSON,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he complains about his conditions of confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636 (b). Because petitioner has not exhausted administrative remedies, it must be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner alleges that he has been discriminated against because he is housed in the Eighth Circuit and does not qualify for a one-year reduction in sentence upon completion of a drug abuse program, thereby being deprived of equal opportunity available to inmates in the Ninth Circuit.

After a Show Cause Order, a Response was filed. Subsequently, counsel for petitioner filed a motion to withdraw. Petitioner was afforded additional time to file a traverse, which he did not do.

According to respondent, petitioner has not exhausted administrative remedies on this issue, and a review of the record supports this position. Regardless of the merits, if any, of petitioner's complaints, a full review of the record indicates that he has not exhausted administrative remedies

on this issue. The law is clear that petitioner must exhaust available administrative remedies. Willis v. Ciccone, 506 F.2d 1011, 1015 (8th Cir. 1974); Johnson v. Jones, 340 F.3d 624, 627 (8th Cir. 2003). Because petitioner has failed to exhaust administrative remedies available to him, the Court finds that it must be recommended that he be denied leave to proceed in forma pauperis.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be, and is hereby, dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
CHIEF, UNITED STATES MAGISTRATE JUDGE

Date: 10/21/09

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.